IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Criminal Appeal No.275 of 2004.

Date of decision: 8.8.2007

Kaka Ram **..Appellant.**

Versus

State of H.P. **..Respondent**

Coram

The Hon'ble Mr. Justice Surjit Singh, J.

The Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting ?[1] *no*

For the Appellant: **Mr. M.S. Guleria, Advocate.**

For the Respondent: **Mr. Som Dutt Vasuudeva, Addl. A.G. with Mr. D.S. Nainta, Dy. A.G.**

Surjit Singh, J. (oral)

Appellant Kaka Ram is aggrieved by that part of the judgment dated 31.5.2004 of the trial Court whereby he has been convicted of an offence punishable under Section 212 I.P.C. and sentenced to undergo simple imprisonment for the period he had been in custody during the investigation and trial of the case and to pay a fine of Rs.500/-; in default of payment of fine to undergo simple imprisonment for a further period of 15 days.

2. Appellant was sent up for trial alongwith one Bipan Kumar (now dead) for offences punishable under Sections 120-B and 212 I.P.C. Bipan Kumar, in addition to the offence under Section 120-B IPC, was tried for offence of murder punishable under Section 302 I.P.C. It was alleged that

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

Bipan Kumar after murdering one Mehar Chand escaped from the scene on a scooter belonging to the present appellant, which was parked near the site of the occurrence. According to the prosecution, the scooter belonged to the present appellant. Allegation was also made against the appellant that the murder had been committed pursuant to a conspiracy between him and Bipan Kumar.

3. Trial Court convicted Bipan Kumar, the co-accused of the appellant of the offence punishable under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay certain amount of fine. The present appellant was convicted of the offence punishable under Section 212 I.P.C.

4. Appellant's grievance is that there is absolutely no evidence suggesting that he knew, at the time when he allegedly accompanied Bipan Kumar on the scooter, that he (Bipan Kumar) had committed the murder nor is there any evidence suggesting that the scooter belonged to him. Learned counsel submits that the only evidence that has come on record is that after the commission of the murder, Bipan kumar came to the site where the scooter was parked and he started the scooter and asked the appellant to ride its pillion and the appellant, without knowing that Bipan Kumar had committed any murder, went with Bipan Kumar riding the pillion of that scooter.

5. We have been taken through the evidence on record by the learned counsel for the appellant. The evidence that had been led against the appellant during the course of the trial, per testimony of PW3 Prithi Chand, PW4 Raj Kumar, PW6 Madho Ram son of Brikam Chand, PW8 Madho Ram son of Sita Ram, PW16 Ajay Kumar and PW18 Joginder Singh, is that after committing the murder Bipan Kumar went to the site where scooter, in question was parked and after starting that scooter, asked the

appellant, who happened to be present nearby to ride its pillion and the appellant, on his asking, rode the pillion and went with Bipan Kumar. There is absolutely no evidence that the appellant knew that Bipan Kumar had committed the murder nor is there any evidence in support of the allegation that the scooter belonged to the appellant.

6. Learned Additional Advocate General referring to the testimony of PW16 Ajay Kumar stated that the appellant accompanied by Bipan Kumar went to the house of this witness and asked the witness to give a set of clothes of his uncle Parkash Chand so that Bipan Kumar could change his clothes, which were stained with blood. The witness at the time of alleged incident was less than eight years of age. The statement of this witness is inherently incorrect because he says that Bipan Kumar was wearing white pants bearing stains of blood, when appellant brought him to his place and demanded a set of clothes of his uncle Parkash Chand. However, the blood stained pants of Bipan Kumar, which the police took into possession, during the course of investigation, vide seizure memo. Ext.PW7/A, was grey coloured, which means the testimony of the witness that the appellant and Bipan Kumar came to his house and the appellant asked for his uncle's clothes is not correct.

7. In view of the above stated position, we have no manner of doubt that the conviction and sentence of the appellant, as ordered by the trial Court, are not justified and are unwarranted. Consequently, the appeal is accepted and the conviction and sentence of the appellant are set-aside and he is acquitted. Judgment of the trial Court is modified accordingly.

Appeal stands disposed of.

(Surjit Singh), J

August 8, 2007(ss) **(Surinder Singh), J.**